IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Rajendra Singh Vs. State of Rajasthan

S.B.Cr. MISC. CANCELLATION OF BAIL APPL. NO.56/2007

DATE OF ORDER :: December 12, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.B.S.Rathore, for the petitioner.
Mr.Ashok Upadhyaya, P.P. for the State.
Mr.Sohan Lal the accused-respondent No.2.

BY THE COURT:

By the instant petition under section 439(2) of the Code of Criminal Proecdure, 1973 (for short `the Code' hereinafter), the first informant has challenged the order dt. 30.10.2007 passed by Sessions Judge, Jodhpur (for short `the Sessions Judge' hereinafter) granting bail to the accused-respondent No.2 Raju alias Rajendra Singh under section 438 of the Code in a case arising out of FIR No.512//2007, Police Station, Mahamandir, Jodhpur for the offences under sections 148, 149, 341, 323, 324, 427 and 307 I.P.C.

I have heard learned counsel for the parties.. Carefully gone through the order impugned dated 30.10.2007 passed by the learned Sessions Judge as also the police investigation diary.

It is contended by the learned counsel for the injured-petitioner that prima facie there is an evidence against the accused-respondent No.2 having committed the offence punishable under the various sections including the offence under section 307 I.P.C. According to the learned counsel for the injured-petitioner prima facie, from the statements of the witnesses and the injury report of the injured-petitioner, all essential ingredients to construe the offence under section 307 I.P.C. is made out and the offnece under section 307 I.P.C. is non-bailable and the matter was at the investigation stage and repeated injuries have been caused to the injured-petitioner by the accused-respondent No.2 by sword on most vital part i.e. skull of the injured-petitioner and the injured-petitioner has suffered as many as three injuries by sword on his head causing three incised wounds on the various parts of the head i.e. occipital region, mid of frontal skull and occipital area of the skull of various dimension. Apart from three injuries on the skull, the petitioner has suffered as many as three injuries on the shoulder, legs etc. It is further contended that the anticipatory bail under section 438 Cr.P.C. has been granted by the learned

Sessions for unlimited period, which is contrary to the dictum of law laid down by the Hon'ble Supreme Court in Adri Dharan Das Vs. State of W.B., 2005 SCC (Cri) 933.

Learned Public Prosecutor also submits that after the thorough investigation, the police prima facie came to the conclusion that offences under sections 148, 149, 341, 323 324, 427 and 307 I.P.C. made out. Learned Public Prosecutor has shown me the conclusion as endorsed by the police in the police investigation diary and, therefore, according to the learned Public Prosecutor, the learned Sessions Judge fell in error in granting the anticipatory bail to the accused-respondent No.2 in such a case where there is prima facie a strong evidence against the accused-respondent No.2 for committing the offences noticed above more particularly the offence punishable under section 307 I.P.C.

I have carefully gone through the statements of injured witness viz. Rajendra Singh and Ganpat Singh. Both these persons suffered injuries at the hands of accused-respondent No.2. Apart from these witnesses, there are statements of Kalu Singh s/o Prem Singh, Mahendra Singh s/o Sher Singh. All these witnesses categorically stated that accused-respondent No.2 was armed with the sword and inflicted repeated injuries to the

injured-petitioner on his skull with the intention to commit murder. Thus, prima facie there is strong evidence of committing the offence of attempt to murder having essential ingredients for construing the offence under section 307 I.P.C. and the deadly weapon of offence i.e. Sword alleged to have been used by the accused-respondent No.2 in inflicting repeated three injuries on the skull of the injured, which is most vital part of the body and ignoring this material fact and question of recovery of the sword, the learned Sessions Judge granted the anticipatory bail to the accused-respondent No.2 under section 438 Cr.P.C. depriving the police investigation agency to recover the weapon of offence, which will be material evidence in the trial of the case. In the FIR as well as the statement of the injured, it has been categorically stated that there is enmity between the injured-petitioner and the accused-respondent No.2 and with an intention to cause the murder of injured-petitioner, the accused-respondent NO.2, who was armed with the sword, inflicted repeated three injuries to the petitioner on his skull. In the statements recorded by the police under section 161 of the Code, the injured Ganpat, Kalu and Mahendra have categorically stated that there is enmity between the petitioner and accused-respondent No.2 and the accused-respondent No.2 having armed with the deadly weapon sword inflicted repeated injuries to the petitioner on his head, which is most vital part of the body.

On perusal of the injury report, it appears that the injured-petitioner suffered as many as three injuries by sword i.e. occipital region, mid of frontal of the skull, occipital area of the skull. Thus, there are two injuries on the occipital area and one on mid of frontal of the skull. All the three injuries by sharp edged weapon and the injured was to be taken to hospital for treatment. These three injuries have specifically been assigned to accused-respondent No.2.

On careful perusal of the order impugned, in my view, the learned Sessions Judge while granting the anticipatory bail under section 438 of the Code in such case where an attempt to life has been made by the accused-respondent No.2 has not assigned any valid and substantial reason and granted the anticipatory bail for an indefinite period. It appears that the weapon of the offence i.e. sword also could not have been recovered because of the grant of anticipatory bail to the accused-respondent No.2. At the stage of granting bail, the court is required to see the material prima facie as to whether the person seeking anticipatory bail under Section 438 of the Code has been falsely implicated, there is no evidence against him or he is not involved in the commission of crime. The bail under Section 438 of the Code is granted in exceptional cases as has been held by the Hon'ble Supreme Court in catena of decisions.

In Adri Dharan Das Vs. State of W.B. (supra), the Hon'ble Supreme Court held that the power exercisable under Section 438 Cr.P.C. is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse the liberty, then power is to be exercised under Section 438. The power being of important nature it is entrusted only to the higher echelons of judicial forums i.e. the Court of Sessions or the High Court. It is the power exercisable in case of an anticipated accusation of non-bailable offence. The object which is sought to be achieved by Section 438 Cr.P.C. is that the moment a person is arrested, if he has already obtained an order from the Court of Sessions or the High Court, he shall be released immediately on bail without being sent to jail. The Hon'ble Supreme Court further held that the anticipatory bail is given for a limited duration so as to enable the accused to move the regular court for bail in terms of Section 439 Cr.P.C. It was further observed by the Hon'ble Supreme Court that if an application is made to the High Court or the Court of Sessions, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It was further observed that normally a

direction should not issue to the effect that the applicant shall be released on bail “whenever arrested for whichever offence whatsoever”. Such “blanket order” should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. The Hon'ble Supreme Court further held that ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The illegality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed

while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.

On careful perusal of the police investigation diary, injury reports of the injured-petitioner, Rajendra Singh, Ganpat Singh as also the statements of the witnesses referred hereinabove, in my view, there is prima facie strong evidence that the accused-respondent No.2 caused repeated injuries on most vital part of the body i.e. skull of the injured-petitioner by the deadly weapon sword with an intention or having knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder and thus, prima facie, apart from other offences noticed above, offence under section 307 I.P.C. is also made out and in such cases, a custodial interrogation is necessary as also discovery of the material fact and recovery of the weapon of the offence on furnishing the information by the accused respondent No.2. So far as nature of the injuries even if found to be simple in nature, the material available on record shows that the accused caused the injuries with an intention or having knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder.

I am fortified my view with the catena of decisions of

Hon'ble Supreme Court in State of Maharashtra Vs. Balram Bama Patil & Ors., (1983) 2 SCC 28, Girja Shankar Vs. State of U.P., JT 2004 (2) SC 140, Sarju Prasad Vs. State of Bihar, AIR 1965 SC 843, Bappa alias Bapu Vs. State of Maharashtra, AIR 2004 SC 4119, Vasant Vithu Jadhav Vs. State of Maharashtra, (2004) 9 SCC 31, R. Prakash Vs. State of Karnataka, (2004) 9 SCC 27.

In State of Maharashtra Vs. Balram Bama Patil & Ors. (supra), the Hon'ble Apex Court held as under:-

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 merely because the injuries inflicted on the victim were in the nature of a simple hurt."

In Girja Shankar Vs. State of U.P. (supra), the Hon'ble Supreme Court observed that for constituting an offence under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. The Apex Court further held as under:-

> "It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section."

In Sarju Prasad Vs. State of Bihar (supra), the Hon'ble Supreme Court held that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not itself sufficient to take the act out of the purview of Section 307 IPC.

In Bappa alias Bapu Vs. State of Maharashtra (supra), the accused along with victim had gone to cinema to witness movie and were coming back by bicycle. Suddenly accused got down from bicycle, stabbed the victim on his stomach and back and pressed his neck. It was contended that keeping in view the nature of the injuries sustained, the offence cannot be said to be one covered by Section 307 IPC. While affirming the conviction under Section 307 IPC, the Hon'ble Supreme Court held as under:-

> "It is sufficient to justify a conviction under Section 307 IPC if there is present an intent couple with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof."

In Vasant Vithu Jadhav Vs. State of Maharashtra (supra),

the accused opened fire from a gun from a very close range at victim when he was sleeping on a cot. The shot hit the springs of the cot. The bullet broke into pieces and three such pieces struck the victim. Upholding the conviction under Section 307 IPC, the Hon'ble Supreme Court held as under:-

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

In R. Prakash Vs. State of Karnataka (supra), the Hon'ble Supreme Court observed that intent coupled with some overt act in execution thereof is sufficient for constituting an offence under Section 307 IPC. The Apex Court further held as under:-

> "It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death

> should have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt."

Thus, in view of the law laid down by the Hon'ble Supreme Court, for constituting an offence under Section 307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted and it is sufficient to justify a conviction under Section 307 IPC if there is present an intent coupled with some overt act in execution thereof. In the instant case, accused-respondent No.2 repeatedly caused injuries by a deadly weapon sword on the most vital part of the body of the petitioner i.e. skull. As many as three injuries have been caused by sharp edged wapon and, therefore, at this stage, in my view it cannot be said that the accused-respondent No.2 has not been involved in commission of the crime, more particularly for the offence

alleged including the offence under section 307 I.P.C. and, therefore, the order impugned cannot be sustained.

Consequently, the application for bail cancellation is allowed and the order impugned dt. 30.10.2007 granting anticipatory bail to accused-respondent No.2 Raju alias Rajendra Singh s/o Durga Dan is hereby set aside and bail bonds if submitted by him stands cancelled and he is directed to surrender forthwith before the Investigating Officer for further investigation and if the accused-respondent No.2 fails to surrender, it will be open for the Investigating Officer to effect his arrest and proceed with the investigation of the case.

[H.R.PANWAR],J.

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